BILL NO. G-74-~~77~~-16

GENERAL ORDINANCE NO. G- Wildeman

AN ORDINANCE Providing for the establishment of an Environmental Control Commission as a part of the joint Allen County-Fort Wayne Board of Health to provide for the conservation of the air, water and land resources of the City of Fort Wayne, City of New Haven and County of Allen; and for the abatement of noise, air, water and solid waste pollution; to provide a statement of policy definition; administration; to require registration of contaminant sources; to provide for certificates of approval; to provide for fees and charges; to provide exemptions; to create an Environmental Control Commission with authority to conduct hearings; to provide a right of appeal; to permit exemptions; to require environmental impact statements from all governmental units; to establish dates for compliance with orders; to restrict emissions of contaminants from all sources; to provide penalties for violations; to provide a severable clause; and to provide the effective date thereof.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, THE COMMON COUNCIL OF THE CITY OF NEW HAVEN AND BOARD OF COUNTY COMMISSIONERS OF ALLEN COUNTY, INDIANA:

SECTION I SHORT TITLE

This ordinance shall be known and may be cited as the Allen County - Fort Wayne - New Haven Environmental Control Ordinance.

SECTION II DECLARATION OF POLICY

It is hereby declared to be the public policy of the City of Fort Wayne, City of New Haven and County of Allen all in the State of Indiana, to preserve, protect and improve the environmental resources of the City of Fort Wayne, City of New Haven and County of Allen so as to promote health, safety and welfare, prevent injury to human health, plant and animal life and property, foster the comfort and convenience of its inhabitants and, to the greatest degree practicable, facilitate the enjoyment of the natural attraction of the City of Fort Wayne, City of New Haven and County of Allen.

SECTION III CREATION OF ENVIRONMENTAL CONTROL COMMISSION AND APPOINTMENT OF MEMBERS

There is hereby created an Environmental Control Commission as part of the Joint Allen County-Fort Wayne Board of Health which shall consist of seven (7) members to be appointed by the five (5) member Health Board Commission and confirmed by the Fort Wayne City Council and the Allen County Board of Commissioners. The seven (7) members shall consist of the following:

A physical scientist, a representative of labor, a representative of industrial management, an attorney, a representative of agriculture and 2 representatives from the public at large who have demonstrated interest and knowledge in the field of environmental protection. The term of the office of each member shall be three years except that two of the initially appointed members shall serve for terms of one year and two of the initially appointed members shall serve for terms of two years. The members shall serve without compensation except for a per diem of $15.00 per day during actual attendance of scheduled meetings and shall be reimbursed for actual expenses incurred in the performance of their duties. Members of the Board shall be subject to removal by majority vote of the Commission for failure to attend three consecutive scheduled meetings of the Commission, and otherwise subject to removal only upon recommendation of a majority of the City Council or County Board of Commissioners and the approval of such recommendations by two-thirds of the Commission. All vacancies shall be filled by the Health Board Commission.

This ordinance is enacted pursuant to IC 18-5-1-1 (Burns' Indiana Revised Statutes Section 53-101 et seq.), cited as the Interlocal Co-operation Act. Pursuant to agreement by City of Fort Wayne, City of New Haven and County of Allen, the duration of said agreement shall be indefinite and the proper passage of this ordinance by all three of the above named City of Fort Wayne, City of New Haven and County of Allen shall constitute this agreement.

SECTION IV ESTABLISHMENT

The Environmental Control Commission is hereby granted power: to establish divisions and appoint Division Chiefs within the Commission; to exercise authority, administer, and establish rules governing, but limited to, the areas of air, water, solid waste and noise pollution; to employ and appoint personnel on the basis of merit; and to promulgate rules relating to its functions as determined by the Commission at its sessions and to review and recommend or veto environmental impact statements submitted to it by other governmental units subject to the provisions of this ordinance.

SECTION 1.0 . AIR POLLUTION CONTROL DIVISION

SECTION 1.1 DEFINITIONS

The following definition shall apply in the interpretation and enforcement of this ordinance:

(A) Air Contaminant: Is any smoke, soot, fly ash, dust, cinder, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic substances, waste matter, particulate matter, solid matter, liquid matter, gaseous matter, or any other material which by its presence in the ambient air may constitute air pollution, excluding uncombined water.

(B) Air Pollution: Is the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration that they are or may tend to be injurious to human, plant or animal life, or interfere with the enjoyment of life, property or the conduct of business.

(C) Ambient Air: Is the air that envelopes or surrounds the earth and includes all space outside of buildings, stacks, or exterior ducts.

(D) Cleaning fires: Is the act of removing ashes from a fuel bed or furnace.

(E) Control Equipment: Is any equipment which has the function of controlling the emissions from a process, fuel-burning, or refuse-burning equipment and thus reduces the creation of, or the emission of air contaminants into the atmosphere, or both.

(F) Division: Is the air pollution control division of the environmental control commission.

(G) Dust: Is solid particles released into the air by natural forces or by mechanical processes.

(H) Dust Separation Equipment: Is any device for separating dust from the air or gas medium in which it is carried.

(I) Emission: Is a discharge or release into the ambient air of any air contaminant, or any substance which by chemical reaction may be, an air contaminant.

(J) Flue: See stack

(K) Fly Ash: Is suspended particles, charred paper, dust, soot or other partially incinerated or burned matter carried in the products of combustible fuel refuse.

(L) Fuel: Is the form of combustible matter, excluding combustible refuse.

(M) Fuel Burning Equipment: Is any furnace, steam, hot air or hot water generating equipment including duct work, stacks, chimneys, control equipment or any other device exclusive of process equipment and incinerators in which fuel is burned and in which the products of combustion do not come in direct contact with any process material or heat transfer medium.

(N) Fumes: Are solid or liquid particles generated by the condensation of vapors or gases that are of such character as to create an unclean, unhealthy, or an offensive condition when air borne.

(O) Garbage: Is all animal and vegetable wastes and all other putrescible matter.

(P) Gas: Is that state of matter having neither independent shape nor independent volume but tending to expand and diffuse indefinitely.

(Q) Incinerator: Is a combustion device specifically designed for the destruction of solid, semi-solid liquid or gaseous combustible wastes by burning, and all appurtenances thereof.

(R) Minor Repair: Is a repair or alteration of any installation, equipment or device which does not alter the quantity and character of discharge into the open air of smoke, soot, dust, or noxious odors, fumes and gases.

(S) Odor: Is that property of an air contaminant detectable by the sense of smell.

(T) Opacity: Is the property of a substance which renders it partially or wholly impervious to rays of light.

(U) Open Fire: Is a fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator, or other equipment connected to a stack.

(V) Particulate Matter: Is material which is or has been suspended in air or other gases and is a liquid or solid at standard conditions of temperature (68°F) and pressure (14.7 PSIA - pounds per square inch absolute.)

(U) Person: Is any individual, partnership, firm, public or private corporation, association, subdivision or agency or the state, or any other legal entity.

(X) Process Weight: Is the total amount of all material introduced into an industrial operation, including solid fuels, but excluding liquid fuels and gaseous fuels when these are used as fuels and air introduced for purposes of combustion.

(Y) Process Weight Per Hour: (1) Is for continuous or long-term operation: the total process weight for the entire period of operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof. (2) Is for batch operation; the total process weight for a period which covers a complete operation or an integral number of cycles, divided by the number of actual process hours of operation during such period.

(Z) Salvage Operation: Is any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

(AA) Smoke: Is small gas borne particles, other than water, in sufficient number to be observable.

(BB) Source: Is any physical arrangement, condition or structure which may emit air contaminants.

(CC) Stack: Is any flue, pipe, duct, chimney, or opening arranged to conduct gaseous effluent to the ambient air.

(DD) Standard Conditions: Is a gas temperature of 68°F and a gas pressure of 14.7 pounds per square inch absolute (P.S.I.A.)

(EE) Trade Waste: Is any solid, liquid, or gaseous material or rubbish resulting from construction or the conducting of any business, trade or industry, or any demolition operation.

(FF) Unit Operation: Is a method wherein raw materials do or may undergo physical change, or by which raw materials may be altered into different states, such as vapor, liquid, or solid, without changing into a new substance or substances with different chemical compositions.

(GG) Unit Process: Is a reaction wherein substances do or may undergo a chemical change; and one or more new substances with different chemical compositions are produced.

(HH) Vapor: Is the gaseous state of liquids or solids.

SECTION 1.2 POWERS AND DUTIES

In addition to any other powers invested in it by law, the Commission shall have the power to:

(A) Establish or adopt by reference to laws or regulations of the State of Indiana or the U nited States permissible rates of emissions.

(B) Issue permits as provided in this act.

(C) Issue such orders as may be necessary to effectuate the purposes of this ordinance and enforce the same by all appropriate administrative and juducual proceedings.

(D) Hold hearings on objections to its orders.

(E) Conduct tests of discharges.

(F) H ave the power to enter premises at all reasonable times to conduct tests and inspections.

(G) Conduct studies, investigations and research relating to air pollution and its prevention, abatement and control.

(H) Institute charges on contaminated discharges.

(I) Advise and consult with governmental and private sources with regard to air pollution control matters.

(J) Require Environmental Impact Statements from all other governmental units and review those matters having a bearing on air pollution referred by other agencies, and make reports, including recommendations to the referring agencies with respect thereto; and to approve, or to veto provisions suggested by the Environmental Impact Statements submitted to the Commission by other agencies.

(K) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(L) Encourage voluntary cooperation by persons affected or affected groups to achieve the purposes of this ordinance.

(M) Receive or administer grants or other funds or gifts from public and private agencies, including the State and Federal Governments, for the purposes of carrying out any of the functions of this ordinance.

(N) Do any and all acts which may be necessary for the successful prosecution of the policy of this ordinance and such other acts as may be specifically enumerated herein.

SECTION 1.3 EMISSIONS PROHIBITED AND ADOPTION BY REFERENCE OF PORTIONS OF THE RULES AND STANDARDS OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE AIR POLLUTION CONTROL DIVISION OF THE INDIANA STATE BOARD OF HEALTH.

It shall be unlawful for any person to discharge or cause to be discharged into the atmosphere from any source of emission whatsoever any air contaminant or other material in violation of or which has not been treated to meet the requirements of the conditions and standards set forth by the air pollution control division of the State Board of H ealth of the State of Indiana or any successor thereto or of the published standards of the Environmental Protection Agency of the United States or any successor department or of this division as published in its official ap endix as revised from time to time.

SECTION 1.4 INSPECTIONS

Any duly authorized officer, employee, or representative of the Commission may enter and inspect any property; premise or place at any reasonable time for the purpose of investigating or testing either an actual or suspected source of air pollution, or of ascertaining the state of compliance with this ordinance and regulation enforced pursuant thereto. N o person shall refuse entry or access to any authorized representative of the Commission who requests entry for the aforementioned purposes, and who presents appropriate credentials or warrant; nor shall any person obstruct, hamper or interfere with any such inspection.

SECTION 1.5 CONFIDENTIALITY OF RECORDS

Any records or other information which relate to processes or production unique to the owner or operator and which are entitled to protection as trade secrets which would tend to affect adversely the competitive position of such owner or operator shall be only for the confidential use of the Division and other departments, agencies and officers of the Environmental Control Commission, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of said records or information by any Division, agency or officer of the Environmental Control Commission, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of said records or information by any Division, agency or officer of the Environmental Control Commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

SECTION 1.6 REPORTING OF INFORMATION

Persons engaged in operations which may result in air pollution, shall, if required, file with the Commission reports containing information as to:

(A) Location and description of source.

(B) Rate, duration and composition of contaminant emission.

(C) Such other information as the Commission may require.

SECTION 1.7 PERMITS

A system of permits shall be applicable as follows:

(A) Installation permits are required for the construction, and installation or alteration of any fuel-burning equipment with a rated capacity of more than 1,000,000 BTU/hr., or any other equipment capable of emitting air contaminants.

Fuel-burning equipment, which has a rated capacity of less than 1,000,000 BTU/hr. and which is used for comfort heating equipment, boilers, water heaters, air heaters, steam generators, or which is used singly and/or jointly by occupants of dwellings, does not require an installation or operating permit if the equipment is:

(1) Oil fired and burns No. 1 or No. 2 fuel oil.

(2) Gas fired and burns only natural gas, liquid petroleum gas, or a mixed gas, distributed by a utility in accordance with the rules of the Public Service Commission of the State of Indiana.

(3) Solid fuel fired, and for which equipment the maximum fuel input produces less than 200,000 BTU/hr.

Fuel burning equipment not permanently installed in a stationary building or structure, and repairs and minor alterations to previously approved equipment or to equipment installed prior to the effective date of this ordinance do not require an installation permit.

(B) Operating permits are required for all fuel burning equipment or any other equipment capable of emitting air contaminants except those listed as exceptions under i.7A above.

(C) The application for such permits shall be accompanied by plans, specifications, and such other information as the Commission deems necessary.

(D) The Commission by rules and regulations shall provide for the issuance, suspension, revocation and renewal of any permits which are required pursuant to this section.

(E) No permit shall be issued for any installation not in compliance with the provisions of this ordinance.

(F) No installation shall be placed in operation unless it is constructed in accordance with approved plans, specifications and permit.

(G) Where a permit is denied or violated, the Division is hereby authorized to seal the equipment.

SECTION 1.8 EXEMPTIONS

(A) Any person responsible for any source of air contaminant may apply to the Commission for an exemption or partial exemption from the provisions of this ordinance. The application shall be accompanied by such information and data as the Commission may require. The Commission may grant such exemption or partial exemption if it finds that;

(1) The discharges occurring or proposed to occur do not constitute a danger to public health or safety and

(2) Compliance with previsions of this ordinance from which exemption is sought would produce serious hardship without equal or greater benefits to the public.

(B) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the Commission has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.

(C) No exemption or partial exemption issued pursuant to this Section shall be granted for a period to exceed one year, but any such exemption or partial exemption may be renewed for like periods if no complaint has been made and duly considered at a public hearing by the Commission on account thereof or if, after such complaint has been made and duly considered at a public hearing by the Commission on due notice, the Commission finds that a renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the exemption or partial exemption. Immediately prior to making his application for renewal the applicant shall give public notice of such application in accordance with the rules and regulations of the Commission. Any renewal granted pursuant to the subsection shall be on the same grounds and subject to the same limitations and requirements as provided in Subsection A of this Section.

(D) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof, but shall be in the discretion of the Commission. However, any person adversely affected by the exemption, a partial exemption or renewal granted by the Commission may obtain juducual review thereof by a proceeding in the Circuit Court of Allen County.

(E) Nothing in this Section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 1.1 of this ordinance to any person or his property.

(F) Any exemption granted pursuant to this Section may be revoked by the Commission at any time for failure to comply with any condition attached to said exemption or for other good cause shown.

(G) Nothing in this Section shall be construed to limit the open burning of leaves or other matter incidental to vegetation growing on the land in those areas where there exists less than one (1) dwelling house per one-half (1/2) acre of land according to official surveys and plat maps (and where no general public provision has been made for pick up or disposal of such matter, and a specific exemption is hereby created for such areas, conditions and matter aforesaid.

SECTION 1.9 FEES

Fees for the issuance of installation and/or operating permits for items A, B and C by the Commission shall be levied as follows:

(A) Fuel-burning equipment used for space heating, steam, and hot water or power generation for each unit:

(1) of a capacity of 1,000,000 BTU/hr. or more - $15.00
(2) of a capacity of less than 1,000,000 BTU/hr. - $5.00

(B) Refuse-burning equipment, for each unit:

(1) with less than fifteen square feet of grate area - $10.00
(2) with fifteen or more square feet of grate area - $15.00

(C) Process equipment or control devices:

(1) per one unit operation or one unit process creating atmospheric pollution or any device controlling atmospheric pollution - $10.00

(D) Application for any variance or exemption from the requirements of this act - $25.00

(E) Registration of each facility subject to this act - $10.00

(F) Any change or amendment of registration - $5.00

(G) Fees for the annual reissuance of permits and inspection of above items will be as stated in A, B. and C of Section 1.9.

SECTION 1.10 ENFORCEMENT

(A) Whenever the Commission has reason to believe that a violation of any provision of this ordinance or a rule or regulation issued pursuant thereto has occurred, it shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the ordinance, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than five days after the dates such order is served, the person or persons named therein request in writing a hearing before the Commission. In lieu of such order, the Commission may require the alleged violator or violators to appear before the Commission for a hearing at a time and place specified in the notice, to answer the charges complained of, or the Commission may initiate the appropriate action for the recovery of a penalty pursuant to Section 1.13 of this ordinance.

(B) After such hearing, the Commission shall affirm, modify, or rescind its order or issue an appropriate order or orders for the prevention, abatement, or control of the air pollution involved. Such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe time tables for necessary action in preventing, abating or controlling the air pollution.

(C) Nothing in this ordinance shall prevent the Commission from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

(D) Citizen Suit: In furtherance of the purpose of the Ordinance to protect the public health and welfare and control air pollution, the Circuit and Superior Courts of Allen County shall have original jurisdiction, to enforce, or to require the enforcement of, any applicable schedule or timetable of compliance, emission requirement, standard of performance, emission standard or prohibition established pursuant to this Ordinance. Civil actions for such enforcement, or to require such enforcement, may be brought by one or more persons on their own behalf, against any person, including, but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such schedule, timetable, emission requirement, standard of performance, emission standard, or prohibition.

Nothing in this section shall affect the right of such persons as a class or as individuals under any other law to seek enforcement of such standard or any other relief.

Prior to instituting any suit, under this subsection, such person or persons shall be certified or registered mail or personal service, notify (A) the Commission, (B) an authorized representative of the Commission if any, in the office responsible for the area in which the alleged violation occurs, (C) an authorized representative of the air pollution control agency of Indiana, and (D) the person, or persons alleged to be in violation of such alleged violation. Such notice shall be in accordance with regulations prescribed by the Commission as to content and specificity. No such suit shall be filed unless such person or persons shall have afforded the Commission, its representative, or such agency, at least thirty days from the receipt of such notice to institute enforcement proceedings under this Ordinance to abate such alleged violation. In any such action, the Commission, if not a party, may intervene as a matter of right.

The Court, in issuing any order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines such action is in the public interest.

SECTION 1.11 EMERGENCY PROCEDURE

Notwithstanding the provisions of this ordinance or any other provision of law, if the Commission finds that any person is causing or contributing to air pollution and that such pollution creates an emergency which required immediate action to protect the public health or safety, he shall order such person to reduce or discontinue immediately the air

pollution and such order shall be complied with immediately. Upon issuance of such order, the Commission, if requested by the person so ordered, shall fix a time and place for a hearing before the Commission, such hearing to be held within a reasonable time thereafter. Not more than twenty-fourt hours after the conclusion of such hearing, and without adjournment thereof, the order shall be affirmed, modified or set aside.

SECTION 1.12 HEARINGS AND JUDICIAL REVIEW

(A) Any person aggrieved by any order of the Commission may have review thereof by a proceeding in the Circuit Court of Allen County.

(B) Any hearing provided for in this ordinance shall be in accordance with special administrative procedures to be adopted by the Commission or with the provisions of the Administrative Procedure Act of the State of Indiana.

SECTION 1.13 PENALTIES

(A) Any person who violates any provision of this ordinance, or any rule or regulation enforced pursuant thereto shall be subject to a fine of not to exceed $1,000.00. Each day of violation shall constitute a separate offense and each prohibited emission and emission point shall constitute a separate offense by the terms of this ordinance.

(B) Action pursuant to Subsection (A) of this Section shall not be a bar to enforcement of this ordinance, rules and regulations enforced pursuant thereto, and orders made pursuant to this ordinance, by injunction or other appropriate remedy, and the Commission shall have the power to institute and maintain in the name of the Environmental Control Commission any and all such enforcement proceedings.

(C) Nothing in this ordinance shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and to maintain any action or appropriate proceeding therefore.

SECTION 2.0 NOISE CONTROL DIVISION

SECTION 2.1 DEFINITIONS

For the purposes of this section certain words and phrases used herein are defined as follows:

(A) Ambient Noise: Is the all encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far.

(B) "A" Network level: Is the total sound level of all noise as measured with a sound level meter using the "A" weighing network. The unit measurement is the dB(A).

(C) Bel: Is a unit of level when the base of logarithm is ten. Use of the bel is restricted to levels of quantities proportional to power.

(D) Decibel: Is one-tenth of a bel and is a unit of level when the base of the logarithm is the tenth root of ten, and the quantities concerned are proportional to power.[1]

[1] Examples of quantities that qualify as power (any form), sound pressure squared, particle velocity squared, sound intensity, sound energy density, voltage squared. Thus, decibel is a unit of sound pressure level squared.

(E) Spectrum: Is a function of time and is a description of its resolution into components, each of different frequency and usually of different amplitude and phase and is also used to signify continuous range of components each of different frequency and usually of different amplitude and phase and is also used to signify continuous range of components usually wide in extent within which waves have some specified characteristics such as "audio-frequency spectrum" and is also applied to functions of variables other than time.

(F) Sound Pressure Level: In decibels of sound is twenty times the logarithum to the base ten of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.

(G) Band Pressure Level: Of sound for a specified frequency band is the sound pressure level for the sound contained within the restricted band. The reference pressure must be specified.

(H) Cycle: Is the complete sequence of values of a periodic quantity that occur during a period.

(I) Frequency: Of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.

(J) Microbar: Is a unit of pressure commonly used in acoustics and is equal to one dyne per square centimeter.

(K) Period: Of a periodic quantity is the smallest increment of time for which the function repeats itself.

(L) Periodic Quantity: Is an oscillating quantity, the values of which recur for equal increments of time.

(M) Sound-Level Meter: Is an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner.

(N) Sound analyzer: Is a device for measuring the bandpressure level or pressure spectrum level of a sound as a function of frequency.

(O) Person: Is any person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.

(P) Emergency Work: Is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or porperty from an imminent exposure to danger.

(Q) All technical definitions are in accordance with American National Standard U.S.A.S, Sl. 1-1960 entitled Acoustical Terminology.

SECTION 2.2 POWERS AND DUTIES

In addition to any other powers and duties invested in it by law, the Commission shall: (A) Establish or adopt by reference to laws or regulations of State of Indiana or the United States permissible magnitudes of sound level.

(B) Issue permits as provided in this act.

(C) Issue such orders as may be necessary to effectuate the purposes of this ordinance and enforce the same by all appropriate and administrative and judicial proceedings.

(D) Hold hearings on objections to its orders.

(E) Conduct tests on noise levels.

(F) Have the power to enter premises at all reasonable times to conduct tests and inspections.

(G) Conduct studies, investigations, and research relating to noise levels and their abatement in control.

(H) Advise and consult with governmental and private sources with regard to noise pollution.

(I) Require Environmental Impact statements of other governmental units and review these matters having a bearing on noise pollution referred by other agencies, and make reports, including recommendations to the referring agencies with respect thereto; and to

approve, or veto provisions suggested by the Environmental Impact Statements submitted to the Commission by other agencies.

(J) Collect and disseminate information and conduct educational and training programs relating to noise pollution.

(K) Encourage voluntary cooperation by persons affected or affected groups to achieve the purposes of this ordinance.

(L) Receive or administer grants or other funds or gifts from public and private agencies, including the State and Federal Governments, for the purposes of carrying out any of the functions of this ordinance.

(M) Classify geographic areas under the Commission's jurisdiction into use districts of either Residential, Commercial or Manufacturing for purposes of setting proper ambient and specific allowable noise levels for varying geographic districts.

(N) Do any and all acts which may be necessary for the successful prosecution of the policy of this ordinance and such other acts as may be specifically enumerated herein.

SECTION 2.3 NOISES PROHIBITED AND ADOPTION BY REFERENCE OF PORTIONS OF THE RULES AND STANDARDS OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE LAWS OF THE STATE OF INDIANA.

It shall be unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in violation of the standards set forth by this division as published in its official appendix as revised from time to time or of the published standards of the Environmental Protection Agency of the United States or of Burns Annotated Statutes §47-2230(A) (IC 9-8-6-36.5), and of other applicable Indiana laws.

SECTION 2.4 INSPECTIONS

Any duly authorized officer, employee, or representative of the Commission may enter and inspect any property; premise or place at any reasonable time for the purpose of investigating or testing either an actual or suspected source of noise pollution, or of ascertaining the state of compliance with this ordinance and regulation enforced pursuant thereto. No person shall refuse entry or access to any authorized representative of the Commission who requests entry for the aforementioned purposes, and who presents appropriate credentials or warrant; nor shall any person obstruct, hamper or interfere with any such inspection.

SECTION 2.5 CONFIDENTIALITY OF RECORDS

Any records or other information which relate to processes or production unique to the owner or operator and which are entitled to protection as trade secrets which would tend to affect adversely the competitive position of such owner or operator shall be only for the confidential use of the Division and other departments, agencies and officers of the Environmental Control Commission, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of said records or information by any Division, agency or officer of the Environmental Control Commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor ambient noise; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

SECTION 2.6 REPORTING OF INFORMATION

Persons engaged in operations which may result in excessive noise pollution, shall, if required, file with the Commission reports containing information as to:

(A) Location and description of source.

(B) Magnitude, duration and composition of expected noise level.

(C) Such other information as the Commission may require.

SECTION 2.7 PERMITS

A system of permits shall be applicable as follows:

(A) An installation permit shall be required by the Commission for any installation or operational procedure causing or producing noise except those listed as exemptions in Section 2.8.

(B) An operating permit shall be required by the Commission for any activity or operation producing noise as determined by the Commission except those listed as exemptions in Section 2.8.

(C) Applications for a permit for relief from the noise level designated in this ordinance on basis of undue hardship may be made to the Commission. Any permit granted by the Commission hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective.

The Commission may grant the relief as applied for if it finds:

(1) That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this ordinance; or

(2) The activity, operation or noise source will be of temporary duration, and can not be done in a manner that would comply with other sub-sections of this section; and (3) That no other reasonable alternative is available to the applicant; and

(b) The division may prescribe any conditions or requirements it deems necessary to minimize adverse affects upon the community or the surrounding neighborhood.

SECTION 2.8 EXEMPTION

The following uses and activities shall be exempt from noise level regulations:

(1) Noises of safety signals, warning devices, and emergency pressure relief valves.

(2) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.

(3) Noises resulting from emergency work as defined in Section 2.1 of this ordinance.

(b) Any other noise resulting from activity of a temporary duration permitted by law and for which a license or permit therefore has been granted pursuant to Section 2.7 of this ordinance.

(5) Any aircraft operated and conformative with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and with duly adopted federal air regulations.

(6) Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations.

SECTION 2.9 FEES

Fees for the issuance of permits by the Commission shall be levied as follows:

(A) Installation permit for a noise source - $10.00

(B) Operating permit for a noise source - 5.00

(C) Registration of each facility subject to this act - $10.00

(D) Any change or amendment of registration - $5.00

(E) Application for any variance or exemption from the requirements of this act - $25.00

(F) Fees for the annual reissuance of permits and inspection of ablve items will be as stated in B of Section 2.9.

SECTION 2.10 ENFORCEMENT

(A) Whenever the Division has reason to believe that a violation of any provision of this ordinance or a rule or regulation issued pursuant thereto has occured, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the ordinance, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than five days after the date such order is served, the person or persons named therein request in writing a hearing before the Commission. In lieu of such order, the Commission may require the alleged violator or violators appear before the Commission for a hearing at a time and place specified in the notice, to answer the charges complained of, or the Commission may initiate the appropriate action for the recovery of a penalty pursuant to Section 2.13 of this ordinance.

(B) After such hearing, the Commission shall affirm, modify, or rescind its order or issue an appropriate order or orders for the prevention abatement, or control of the noise pollution involved. Such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe time tables where necessary action is preventing, abating or controlling the noise pollution.

(C) Nothing in this ordinance shall prevent the Commission from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

(D) Citizen Suit - In furtherance of the purpose of the Ordinance to protect the public health and welfare and control noise pollution, the Circuit and Superior Courts of Allen County shall have original jurisdiction, to enforce, or to require the enforcement of, any applicable schedule or timetable of compliance, emission requirement, standard of performance, emission standard, or prohibition established pursuant to this Ordinance. Civil actions for such enforcement, or to require such enforcement, may be brought by one or more persons on their own behalf, against any person, including, but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such schedule, timetable, emission requirement, standard of performance, emission standard, or prohibition.

Nothing in this section shall affect the right of such persons as a class or as individuals under any other law to seek enforcement of such standards or any other relief.

Prior to instituting any suit, under this subsection, such person or persons shall, by certified or registered mail or personal service, notify (A) the Commission, (B) an authorized representative of the Commission, if any, in the office responsible for the area in which the alleged violation occurs, (C) an authorized representative of the noise pollution control agency of Indiana, and (D) the person, or persons alleged to be in violation of such alleged violation. Such notice shall be in accordance with regulations prescribed by the Commission as to content and specificity. No such suit shall be filed unless such person or persons shall have afforded the Commission, its representative, or such agency, at least thirty days from the receipt of such notice to institute enforcement proceedings under this Ordinance to abate such alleged violation. In any such action, the Commission, if not a party, may intervene as a matter of right.

The Court, in issuing any order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines such action is in the public interest.

SECTION 2.11 EMERGENCY PROCEDURE

Notwithstanding the provisions of this ordinance or any other provision of law, if the Commission finds that any person is causing or contributing to noise pollution in that such pollution creates an emergency which requires immediate action to protect the public health or safety, it shall order such person to reduce or discontinue immediately the noise pollution and such order shall be complied with immediately. Upon issuance of such order, the Commission, if required by the person so ordered, shall fix a time and place for a hearing before the Commission, such hearing to be held within a reasonable time thereafter. Not more than twenty-four hours after the conclusion of such hearing, and without adjournment thereof, the order shall be affirmed, modified or set aside.

SECTION 2.12 HEARINGS AND JUDICIAL REVIEW

(A) Any person aggrieved by any order of the Commission may have review thereof by a proceeding in the Circuit Court of Allen County.

(B) Any hearing provided for in this ordinance shall be in accordance with special administrative procedures to be adopted by the Commission or the Administrative Procedure Act of the State of Indiana.

SECTION 2.13 PENALTIES

(A) Any person who violates any provision of this ordinance, or any rule or regulation enforced pursuant thereto shall be subject to a fine of not to exceed $1,000.00. Each day of violation shall constitute a separate offense and each point of noise emission shall constitute a separate offense by the terms of this ordinanace.

(B) Action pursuant to Subsection (A) of this section shall not be a bar to enforcement of this ordinance, rules and regulations enforced pursuant thereto, and orders made pursuant to this ordinance, by injunction or other appropriate remedy, and the Commission shall have the power to institute and maintain in the name of the Environmental Control Commission any and all such enforcement proceedings.

(C) Nothing in this ordinance shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and maintain any action or appropriate proceeding therefore.

SECTION 3.0 WATER POLLUTION CONTROL DIVISION

SECTION 3.1 DEFINITIONS

(1) Pollution: The presence in the navigable and non-navigable waters of this jurisdiction of any one or more substances or contaminants in quantities which are or may be potentiallly harmful or injurious to human health or wlefare, animal or plant life, or property, including outdoor recreation.

(2) Waters: Shall include, but not to be limited to rivers, lakes to rivers, lakes, streams, springs, impoundments, and all others waters or bodies of water, including fresh, surface or underground, whether navigable or unavigable. Underground waters include, but are not limited to, all underground waters passing through the pores of rock or soils or flowing through in channels, whether man-made or natural.

(3) Person: This includes municipalities, public or private corporations individuals, associations, or other entitles, and includes any officer or governing or managing body of municipalities or public or private corporations.

SECTION 3.2 POWERS AND DUTIES

In addition to any other powers invested in it by law, the Commission shall:

(A) Establish or adopt by reference to laws or regulations of the State of Indiana or the United States permissable rates of emission into waters.

(B) Issue permits as provided in this act.

(C) Issue such orders as may be necessary to effectuate the purposes of this ordinance and enforce the same by all appropriate administrative and judicail proceedings.

(D) Hold hearings on objections to its order.

(E) Conduct tests of discharges into waters.

(F) Have the power to enter premises at all reasonable times to conduct tests and inspections.

(G) Conduct studies, investigations and research relating to water pollution and its prevention, abatement, and control.

(H) Institute charges on effluent discharges.

(I) Advise and consult with governmental and private sources with regard to water pollution control matters.

(J) Require Enviornmental Impact Statements of other governmental units and review those matters having a bearing on water pollution referred by other agencies, and make reports, including recommendations to the referring agencies with respect thereto and to approve, or veto provisions suggested by the Environmental Impact Statement submitted to the comission by other agencies.

(K) Collect and disseminate information and conduct educational and training programs relating to water pollution.

(L) Encourage voluntary cooperation by persons affected or affected groups to achieve the purposes of this ordinance.

(M) Receive or administer grants or other funds or gifts from public and private agencies, including the State and Federal Government for the purposes of carrying out any of the functions of this ordinance.

(N) Do any and all acts which may be necessary for the successful prosecution of the policy of this ordinance and such other acts as may be specifically enumerated herein.

(O) Require thatall existing residential, commercial and industrial sewage facilities within the jurisdictional limits of the Commission be connected to municipal sewage treatment lines or treatment lines serviced by a utility duly franchised by the State of Indiana; where such sewage service is reasonably available; or that said sewage facilities utilize such other private treatment plants asare acceptable to the Commission.

(P) Require that all newly constructed residential, commercial and industrial facilities within the jurisdictional limits of the commission be connected to municipal sewage treatment lines or treatment lines serviced by a utility duly franchised by the Sate of Indianawhere such sewage service is reasonably available; or that such sewage facilities utilize such other private treatment plants as are acceptable to the Commission. including but not limited to absorption field systems which may

approvedsoil percolation standards and/or soil type; but under no circumstances shall filter bed systems be approved for use within the juris dictional limits of the Commission.

SECTION 3.3 EFFLUENTS PROHIBITED AND ADOPTION BY REFERENCE OF PORTIONS OF THE RULES AND STANDARDS OF THE ENVIORNMENTAL PROTECTION AGENCY AND THE STREAM POLLUTION CONTROL BOARD OF THE STATE OF INDIANA

It shall be unlawful for any person to discharge or cause to be discharged into waters within this jurisdiction from any source of emission whatsoever any pollutant or other material in violation of or which has not been treated to meet the requirement of the conditions and standards set forth by the Stream Pollution Control Board of the State of Indiana or any successor thereto or of the published standards of the Envioenmental Protection Agency of the United States or any successor department or of this Commission as published in its official appendix as revised from time to time.

SECTION 3.4 INSPECTIONS

Any duly authorized officer, employee, or representative of the Commission may enter and inspect any property, premise or place at any reasonable time for the purpose of investigating or testing wither an actual or suspected source of water pollution, or of ascertaining that state of compliance with this ordinance and regulations enforced pursuant thereto. No person shall refuse entry or access toany authorized representative of the Commission who requests entry for the aforementioned purposes, and who presents appropriate credentials or warrant; nor shall any person obstruct, hamper or interfere with any such inspection.

SECTION 3.5 CONFIDENTIALITY OF RECORDS

Any records or other information which relates to processes or or production unique to the owner or operator which would tend to affect adversly the competative position of such owner or operator shall be only for the confidential use of the Commission and other departments, agencies, and officers of the Enviornmental Control Commission, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of said records or information by any Commission, agency or officer of the Enviornmental Control Commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

SECTION 3.6 REPORTING OF INFORMATION

Persons conducting operations which may result in water pollution shall, if required, file with the commission reports containing information as to:

(A) Location and description of source.
(B) Rate, duration and composition of contaminant emission.
(C) Such other information as the Commission may require.

SECTION 3.7 PERMITS

A system of permits shall be applicable as follows:

(A) An installation permit shall be required for the installation of any outfall into any waterway.
(B) An installation permit shall be required for the construction of any private or individual sanitary waste sewerage system.
(C) An operating permit shall be required for the operation and use of any outfall into any waterway.
(D) An operating permit shall be required for the operation and use of any private or individual sanitary waste sererage system.

SECTION 3.8 EXEMPTIONS

There areno exemptions which apply to therequirements of Sectim 3 of this ord

SECTION 3.9 FEES

Fees for the issuance of permits by the Commission shall be levied as follows:

(A) Installation permit for any outfalls into any waterway - - - - - - - - - - - - -$5.00
(B) Installation permitfor any private or individual sanitary waste sewerage system - - - - - - - - - - - - - - - $5.00
(C) Operating permit for the operation and use of any outfall into any waterway - - - - - - - - - - - - - - - - - $5.00
(D) Operating permit for the operation of any private or individual sanitary waste sewerage system - - - - $5.00
(E) Registration of each facility subject to this act-$5.00
(F) Any change or amendment of registration - - - - - $5.00
(G) Fees for the annual reissuance of permits and inspection of above items will be as stated in C and D of Section 3.9.

SECTION 3.10 ENFORCEMENT

(A) Whenever the Commission has reason to believe that a violation of any provision of this ordinance or a rule or regulation issued pursuant thereto has occured, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the ordinance, rule or regulations alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that the necessary corrective action betaken within a reasonable time. Any such order shall become final unless, no later than five days after the date such order is served, the person or persons named therein request in writing a hearing before the Commission. In lieu of such order, the Commission may require tha alleged violator or violators to appear before the Commission for a hearing at a time and place specified in the notice, to answer the charges complained of, or the Commission may initiate the appropriate action for the recovery of a enalty to Section 3.13 of this ordinance.

(B) After such hearing, the Commission shall affirm, modify, or rescind its order or issue an appropriate order or orders for the prevention, abatement, or control of the water pollution involved. Such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe time tables for necessary action in preventing, abating and controlling the water pollution.

(C) Nothing in this ordinance shall prevent the Commission from making efforts to obtain voluntary compliance through warning conference or any other appropriate means.

(D) Citizen Suit--In furterance of the purpose of the Ordinance to protect the public health and welfare and control water pollution, the Circuit and Superior Courts of Allen County shall have original jurisdiction, to enforce, or to require the enforcement of, any applicable schedule or time table of compliance, emission requirement, standard of performance, emission standard, or prohibition established pursuant to this ordinance. Civil actions for such enforcement, or to require such enforcement, may be brought by one or more persons on their own behalf, against any person, including but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such person of any such schedule, time table, emmission requirement, standard of performance, emission standard, or prohibition.

Nothing in this section shall affect the right of such persons as a class or as individuals under any other law to seek enforcement if not a party, may intervene as a matter of right.

The court, in issuing any order in action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, whenever the Court determines such action is in the public interest.

SECTION 3.11 EMERGENCY PROCEDURE

Notwithstanding the provisions of this ordinance or any other provisions of law, if the Commission finds that any person is causing or contributing to water pollution and that such pollution creates an emergency which required immediate action to protect the public health or safety, it shall order such persons to reduce or discontinue immediately the water pollution and such order shall be complied with immediately. Upon issuance of such order, the Commission, if requested by the person so ordered, shall fix a time and place for a hearing before the Commission, such hearing to be held within a reasonable time thereafter. Not more than twenty-four hours after the conclusion of such hearing, and without adjournment thereof, the order shall be affirmed, modified or set aside.

SECTION 3.12 HEARING AND JUDICIAL REVIEW

(A) Any person aggrieved by an order of the Commission may have review thereof by a proceeding in the Circuit Court of Allen County.

(B) Any hearing provided for in this ordinance shall be in accordance with special administrative procedures to be adopted by the Commission or with the provisions of the Administrative Procedure Act of the State of Indiana.

SECTION 3.13 PENALTIES

(A) Any person who violates any provision of this ordinance, or any rule or regulation enforced pursuant thereto shall be subject a fine of not to exceed $1,000.00. Each day of violation shall constitute a separate offense and each prohibited emission and emission point shall constitute a separate offense by the terms of this ordinance.

(B)Action pursuant to subsection (A) of this section shall not be bar to enforcement of this ordinance, rules and regulations enforced pursuant thereto, and orders made pursuant to his ordinance, by injunction or other appropriate remedy, and the Commission shall have the power to institute and maintain in the name of the Environmental Control Commission and any and all such enforcement proceedings.

(C) Nothing in this ordinance shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and to maintain any action or appropriate proceeding therefor.

SOLID WASTE POLLUTION CONTROL DIVISION

4.1 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this ordinance:

(A) Public Disposal: Shall mean and relate to the collection, storage, treatment, utilization, processing, or final disposal of refuse, garbage, rubbish, demolition material and liquid waste in containers which have been removed from premises used, owned, leased or operated by any person and transported for disposal.

(B) Person: Is any individual, partnership, firm, public or private corporation, association, sub-division or agency of the State, or any other legal entity.

(C) Refuse: Means any putrescible and nonputrescible solid waste excepting body wastes, and includes but is not limited to garbage, rubbish, trash, ashes, incinerator ashes or residue demolition material and solid or liquid material and individual wastes as well as inoperative or abandoned motor vehicles.

(D) Garbage: Means rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking draining, or storing of meat, fish, fowl, fruit, or vegetable

(E) Incinerate: Means controlled, contained burning of waste materials in incinerators of approved design to reduce waste volume or to produce energy, or both.

(F) Rubbish: Means nonputrescible solid wastes including ashes consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, tree branches, limbs or trunks, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety.

(G) Demolition Material: Means broken bricks, broken concrete blocks, and other masonry, rubber, plastic, electrical wiring, plumbing, and lumber, resulting from the demolition of houses and other buildings and structutres.

(H) Open Dump: Means a site where refuse is dumped and, due to lack of control, may create a breeding place for flys and rats may catch fire, or may produce air or water pollution.

(I) Premises: A tract or parcel of land with or without habitable buildings.

(J) Resource Recovery: Is the extraction of economically usable materials or energy from waste materials by conversion, transformation, reuse and/or recycling.

(K) Salvaging Means the controlled removal of reusable materi

(L) Sanitary Land Fill: Means a method of disposing of refuse on geogically suitable land without creating nuisances or hazards to public health or safety, by utilizing principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, to cover it with a layer of suitable cover at the conclusion of each days' operation or at more frequent intervals as necessary to control leachate.

(M) Scavenging: Means the uncontrolled picking of materials.

(N) Solid Waste: Means garbage, refuse, and other discarded solid materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants. Agricultural Waste: Means animal and slaughter-house wastes, unless residues from crop harvesting, vineyard and orchard prunings, and greenhouse wastes. Commercail Waste: Means waste material which originates in wholesale, retail or service establishments, such as office buildings, stores, markets, theatres, hotels, and warehouses. Industrial Waste: Means waste materials generally discarded from industrial operations or derived from manufacturing processes.

(O) Surface Waste: Means a body of water whose top surface is exposed to the atmosphere and includes a flowing body, as well as a pond or lake.

( ) Ground Water: Means all water other than surface

SECTION 4.2 POWERS AND DUTIES

In addition to any other powers invested in it bylaw, the Commission shall have the power to:

(A) Establish or adopt by reference to laws or regulations of the United States or of the State of Indiana regulations regarding the public disposal of refuse of any nature.
(B) Issue permits as provided in this act.
(C) Issue such orders as may be necessary to effectuate the purposes of this ordinance and enforce the same by all appropriate administrative and judicail proceedings.
(D) Hold hearings on objections to its orders
(E) Have the power to enter premises at all reasonable times to conduct tests and inspections.
(F) Conduct studies, investigations, and research relating to effective methods of resource methods of resource recovery and of public refuse disposal.
(G) Advise and consult with governmental and private sources with regard to resource recovery and to public refuse disposal matters.
(H) Require Enviornmental Impact Statements from all other governmental units and review those matters having a bearing on public refuse and solid waste disposal referres by other agencies, and make reports, including recommendations to the referring agencies with respect thereto; and to approve, or veto provisions suggested by the Enviornmental Impact Statements submitted to the Commission by other agencies.
(I) Collect and disseminate information and conduct educational and training programs relating to resource recovery, public refuse, and solid waste disposal.
(J) Encourage voluntary sooperation by persons affected or affected groups to achieve the purposes of this ordinance.
(K) Receive or administer grants or other funds or gifts from public and private agencies, including the State and Federal Governments, for the purpose of carrying out any of the functions of this ordinance.
(L) Restrict the sale of or require a deposit on non-returnable and ono-degradable containers.
(M) Do any and all acts which may be necessary for the successful prosectution of the policy of this ordinance and such other acts as may be specifically enumerated herein.

SECTION 4.3 REFUSE DISPOSAL METHODS PROHIBITED AND ADOPTION BY REFERENCE OF PORTIONS OF THE RULES AND STANDARDS OF THE INDIANA STATE BOARD OF HEALTH AND THE LAWS OF THE STATE OF INDIANA

It shall be unlawful for any person to engage in operations or acts resulting in disposal of refuse in violation of the laws o f the State of Indiana Board of Health or any successor departments thereto or of the published standards of the Enviornmental Protection Agency or any successor department or of the rules and regulations of this commission as published in its official appendix or any official revision thereof.

SECTION 4.4 INSPECTIONS

Any duly authorized office, employee, or representative of the Commission may enter and inspect any property, premise, or place at any reasonable time for the purpose of investigating or testing either an actual or suspectedsource of violation of public refuse disposal or solid waste disposal methods, or of ascertaining the state of compliance with this ordinance and regulations enforced pursuant thereto. No person shall refuse entry or access to any authorized representative of the Commission who requests entry for the aforementioned purposes, and who presents appropriate credentials or warrant; nor shall any person obstruct, hamper or interfere with any such inspection.

SECTION 4.5 CONFIDENTIALITY OF RECORDS

Any records or other information which relate to processes or production unique to the owner or operator and which are entitled to protection as trade secrets and would tend to affect adversely the competitive position of such owner or operator shall be only for the confidential use of the Commission and other departments, agencies and officials of the Environmental Control Commission, unles

such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of said record or information by any commission, agency or officer of the Enviornmental Control Commission in compiling or publishing analyses or summaries relating to the general condition of the program as a whole; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

SECTION 4.6 REPORTING OF INFORMATION

Persons conducting operations which may result in public refuse disposal, shall, if required, file with the Commission reports containing information as to:
(A) Location and description of operation.
(B) Duration of operation and description of materials and refuse involved.
(C) Other such information as the Commission may require.

SECTION 4.7 PERMITS

A system of annual permits shall be applicable as follows:

(A) Permits shall be required for the installation and operation of any sanitary landfill, private rubbish collection services, junk or scrap yard, resource recovery process intended to dispose of rubbish or refuse as defined, except:
  (1) Transport of ordinary household refuse by owners or occupiers of dwellings.
  (2) Such other authorized disposal method as may be described elsewhere in this act.
(B) The application for such permits shall be accompanied by plans, specifications and such other information as the Commission deems necessary.
(C) The Commission, by rules and regulations, shall provide for the issuance, suspension, revocation, and renewal of any permits, which are required pursuant to this section.
(D) No permit shall be issued for any installation or operational procedure not in compliance with the provisions of this ordinance.
(E) No installation, operation or procedure shall be placed in operation unless it is constructed in accordance with approved plans, specifications and permits.
(F) Where a permit is denied or violated, the Commission is hereby authorized to seal the equipment or order cessation of any operation or procedures found to be in violation of permit provisions.

SECTION 4.8 EXEMPTIONS

(A) Any person responsible for any source of solid waste or refuse pollution may apply to the Commission for an exemption or partial exemption from the provisions of this ordinance. The application shall be accompanied by such information and data as the Commission may require. The Commission may grant such exemption or partial exemption if it finds that:
  (1) The acts occurring or proposed to occur do not constitute a danger to public health orsafety and
  (2) Compliance with provisions of this ordinance from which exemption is sought would produce serious hardship without equal or greater benefits to the public.
(B) No exemption or partial exemption shall be granted pursuant to to this section except after public hearing on due notice and until the Commission has considered the relative interest of the applicant, other owners of property likely to be affected and the general public.
(C) No exemption or partial exemption issued pursuant to this section shall be granted for a period to exceed one year, but any such exemption or partial exemption may be renewed for a like period if no complaint has been made and duly considered at a public hearing by the Commission on account thereof or if, after such complaint has been made and dulyconsidered at a public hearing by the Commission on due notice, the Commission finds that a renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty days prior to the expiration of the exemption or partial exemption. Immediately prior to

making this application for renewal, the applicant shall give public notice of such application in accordance withthe rules and regulations of the Commission. Any renewal granted pursuant to the subsection shall be on the same grounds and subject to the same limitations and requirements as provided inthe original exemption.

(D) An exemption or partial exemption for renewal thereof shall not be a right of the applicant or holder thereof, but shall be in the discretion of the Commission. However, any person, adversely affected by the exemption, partial exemption or renewal granted by the Commission may obtain judicial review thereof by a proceeding in the Circuit Court of Allen County.

(E) Any exemption granted pusuant tothis section may be revoked by the Commision at anytime for failure to comply with any condition attached to said exemption or for other good cause shown.

SECTION 4.9 FEES

Fees for the issuance of permits by the Commission shall be levied as follows:

(A) Installation permits required dor the installation of solid waste disposal facilities as described in the Permits Section- -$10.00

(B) Operating permits required for the operation of solid waste disposal facilities as described in the Permit Section -$10.00

(C) Registration of each facility subject to this act- -$10.00

(D) Any change or amendment of registration- - - - - - -$10.00

(E) Application for any variance or exemption from the requirements of this act- - - - - - - - - - - - - - - - - -$10.00

(F) Fees for the annual reissuance of permits and inspection of above items will be as stated in B section 4.9.

SECTION 4.10 ENFORECEMENT

(A) Whenever the Commission has reason to believe that a violation of any provision of this ordinance or a rule or regualtion issued pursuant thereto has occurred, it shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the ordinance, rule or regulation alleged to be violated, and the fact alleged to constitue a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Anysuch order shall become final unless, no later than five days after the date such order is served, the person or personsnamed therin request in writing a hearing before the Commission. In addition to such order, the Commission may require the alleged violator or violators to appear before the Commission for a hearing at a time and place specofied in the notice, to answer the charges complained of, or the Commission may initiate the appropriate action for the recovery of a penalty pursuant to Section 4.13 of this ordinance.

(B) After such a hearing, the Commission shall affirm, modify or rescind its order or orders for the prevention, abatement, or control of the solid waste or refuse disposal violation involved. Such order shall prescribe the date or dates by which the violation or violations shall cease and may prescribe time tabels for neceaary action in preventing, abating, or controlling said violations.

(C) Nothing in this ordinance shall prevent the Commission from making efforts to obtain voluntary compliance through warning conference, or any other appropriate means.

(D) Citizen Suit: In furtherance of the purpose of the Ordinance to protect the public health and welfare and control solid waste pollution, the Circuit and Superior Courts of Allen County shall have original jurisdiction, to enforce, or to require the enforcement of, any applicable schedule or time-table of compliance, emmission requirement, standard of performance, emission standard, or prohibition established pursuant to this ordinance. Civil actions for such enforcement, or to require such enforcement, may be brought by one or more persons on their own behalf, against any person, including, but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such schedule, timetable, emission requirement, standard of performance, emission standard.

Nothing in this section shall affect the right of such persons as a class or as individuals under any other law to seek enforcement of such standards or any other relief.

Prior to instituting any suit, under this sub-section such person or persons shall, by certified registered mail, or personal service, notify, (A) the Commission, (B) an authorized representative of the Commission, if any, in the office responsbile for the area on which the alleged violation occurs, (C) an authorized representative of the solid waste pollution control agency of Indiana, and (D) the person, or persons, alleged to be in violation of such alleged violation. Such notice shall be in accordance with regulations prescribed by the Commission as to content and specificity. No such suit shall be filed unless such person or persons shall have afforded the Commission, its representative, or such agency, at least thirty days from the receipt of such notice to institute enforcement proceedings under this Ordinance to abate such alleged violation. In any such action, the Commission, if not a party, may intervene as a matter of right.

The Court, in issuing any order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, whenever the Court determines such action is in the public interest.

SECTION 4.11 EMERGENCY PROCEDURE

Notwithstanding the provisions of this Ordinance or any other provision of law, if the Commission finds that any person is causing or contributing to solid waste pollution in that such pollution creates an emergency which requires immediate action to protect the public health or safety, it shall order such person to reduce or discontinue immediately the solid waste pollution and such order shall be complied with immediately. Upon issuance of such order, the Commission, if requested by the person so ordered shall fix a time and place for a hearing before the Commission, such hearing to be held within a reasonable time thereafter. Not more than twenty-four hours after conclusion of such hearing, and without adjournment thereof, the order shall be affirmed, modified, or set aside.

SECTION 4.12 HEARINGS AND JUDICIAL REVIEW

(A) Any person aggrieved by any order of the Commission may have review thereof by a proceeding in the Circuit Court of Allen County.

(B) Any hearing provided for in this ordinance shall be in accordance with special administrative procedures to be adopted by the Commission or with the provisions of the Administrative Procedure Act of the State of Indiana.

SECTION 4.13 PENALTIES

(A) Any person who violates any provision of this Ordinance, or any rule or regulation enforced pursuant thereto shall be subject to a fine of not to exceed $1,000.00. Each day of violation shall constitute a separate offense.

(B) Action pursuant to subsection (A) of this section shall not be a bar to enforcement of this ordinance, rules and regulations enforced pursuant thereto, and orders made pursuant to this ordinance, by injunction or other appropriate remedy, and Commission shall have the power to institute and maintain in the name of the Environmental Control Commission any and all such enforcement proceedings.

(C) Nothing in this ordinance shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and to maintain any actions or appropriate proceedings therefore.

SECTION 4.14 SEVERABILITY CLAUSE

Should any section, sub-section, sentence, clause or phrase of this ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this ordinance in its entirety or any part thereof other than that so declared to be invalid.

SECTION 4.15 EFFECTIVE DATE

As a condition precedent to its entry into force this ordinance shall be submitted to the Attorney General for the State of Indiana for his action pursuant to Burns' Indiana Revised Statutes Section 53-1104. In addition thereto this ordinance shall be submitted to the Indiana State Board of Health pursuant to the provisions of Burns' Indiana Revised Statutes Section 53-1106 for its approval and in accordance therewith.

This ordinance shall as a condition precedent to its effectiveness be passed by the Common Council of the City of Fort Wayne, the Common Council of the City of New Haven, the Allen County Council and duly signed by the Mayor of the City of Fort Wayne, Indiana, by the Mayor of the City of New Haven, Indiana and by the Board of County Commissioners of the County of Allen and duly published in accordance with law.

Eugene Krause
Councilman, Common Council
of the City of Fort Wayne

Vivian G. Schmidt

Approved and signed by me this _____ day of _____, 1974, at the hour of _____.

_____
Mayor

Approved and signed by me this _____ day of _____, 1974, at the hour of _____.

_____
Councilman, Common Council
of the City of New Haven

Approved and signed by me this _____day of _____, 1974, at the hour of_____.

_____
Mayor

Approved and signed by us this _____ day of _____, 1974, at the hour of _____.

BOARD OF COUNTY COMMISSIONERS OF
ALLEN COUNTY, INDIANA

_____

_____

_____

Approved as to form and legality
this 11th day of January, 1974.

_____
Attorney for Common Council
of Fort Wayne

Read the first time in full and on motion by Kraus, seconded by V. Schmidt, and duly adopted, read the second time by title and referred to the Committee on Regulations (~~and the City~~ Plan ~~Commission for recommendation~~) and Public Hearing to be held after due legal notice, at the ~~Council Chambers, City-County Building~~, Fort Wayne, Indiana, on _____, the _____day of _____, 197_____, at_____ o'clock ~~P.M.,E.S.T.~~

Date: 1-22-74

Rosella M. Westerman
CITY CLERK

Read the third time in full and on motion by _____, seconded by_____, and duly adopted, placed on its passage. Passed (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
BURNS	_____	_____	_____	_____
HINGA	_____	_____	_____	_____
KRAUS	_____	_____	_____	_____
MOSES	_____	_____	_____	_____
NUCKOLS	_____	_____	_____	_____
SCHMIDT, D.	_____	_____	_____	_____
SCHMIDT, V.	_____	_____	_____	_____
STIER	_____	_____	_____	_____
TALARICO	_____	_____	_____	_____

DATE: _____

Rosella M. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No._____ on the _____day of _____, 197___.

ATTEST: (SEAL)

_____ _____
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of_____, 197_____, at the hour of_____o'clock _____M.,E.S.T.

_____
CITY CLERK

Approved and signed by me this _____day of _____, 197___, at the hour of_____ o'clock _____M.,E.S.T.

_____
MAYOR

Bill No. G-74-01-16

REPORT OF THE COMMITTEE ON REGULATIONS

We, your Committee on Regulations to whom was referred an Ordinance

Environmental Control Commission Ordinance

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance withdrawn PASS.

VIVIAN G. SCHMIDT - CHAIRMAN — Vivian G. Schmidt

WINFIELD C. MOSES, JR. - VICE CHAIRMAN — Winfield C. Moses Jr.

WILLIAM T. HINGA — William T. Hinga

DONALD SCHMIDT

SAMUEL J. TALARICO — Samuel J. Talarico

12-22-77 CONCURRED IN

DATE CITY CLERK.

Letter by Clerk

Held

Bill No. G-74-01-16

REPORT OF THE COMMITTEE ON REGULATIONS

We, your Committee on Regulations to whom was referred an Ordinance providing for the establishment of an Environmental Control Commission as a part of the joint Allen County-Fort Wayne Board of Health to provide for the conservation of the air, water and land resources of the City of Fort Wayne, City of New Haven and County of Allen; and for the abatement of noise, air, water and solid waste pollution; to provide a statement of policy definition; administration; to require registration of contaminant sources; to provide for certificates of approval; to provide for fees and charges; to provide exemptions; to create an Environmental Control Commission with authority to conduct hearings; to provide a right of appeal; to permit exemptions; to require environmental impact statements from all governmental units; to establish dates for compliance with orders; to restrict emissions of contaminants from all sources; to provide penalties for violations; to provide a serveable clause; and to provide the effective date thereof.

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance _____ PASS.

John Nuckols - Chairman

Vivian G. Schmidt - Vice-Chairman

William T. Hinga

Paul M. Burns

Donald J. Schmidt